

REMARKS

In the Office Action mailed January 30, 2009 the Office noted that claims 1-26 were pending and rejected claims 1-26. Claims 25 and 26 have been amended, no claims have been canceled, and, thus, in view of the foregoing, claims 1-26 remain pending for reconsideration which is requested. No new matter has been added. The Office's rejections are traversed below.

REJECTIONS under 35 U.S.C. § 101

Claims 25-26 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. In particular the Office asserts that the claims are drawn to descriptive material and are per se non-statutory subject matter.

The Applicant has amended the claims to overcome the rejection. Support for the amendment may be found, for example, in Fig. 3, element 25a, and ¶ 0043 of the printed publication version of the Specification. The Applicant submits that no new matter is believed to have been added by the amendment of claims 25 and 26.

Withdrawal of the rejections is respectfully requested.

REJECTIONS under 35 U.S.C. § 103

Claims 1-4, 9-12, 17-20 25 and 26 stand rejected under 35 U.S.C. § 103(a) as being obvious over Davies, EP1124397A2 in view of O'Neill, U.S. Patent Publication No. 2003/0193952. The

Applicant respectfully disagrees and traverses the rejection with an argument.

The Applicant submits herewith a verified translation of Japanese Patent Application 2002-114065, filed April 17, 2002, thus perfecting a priority date of April 17, 2002.

The O'Neill patent is a continuation in part to Application No. 10/357,265 filed February 3, 2003 and claims priority to provisional Application No. 60/378,404 filed May 7, 2002 and provisional Application No. 60/354,195 filed February 4, 2002.

Provisional Application No. 60/354,195 filed February 4, 2002 contains no reference to MN profile state 165 or associated context state. The Applicant acknowledges that provisional Application No. 60/354,195 does mention a user profile; however, this is not the communication context of the claims.

Therefore, O'Neill provides no prior art reference with respect to the communication context of the claims.

Therefore, the Office has failed to provide a *prima facie* case of obviousness.

Claims 5-7, 13-15 and 21-23 stand rejected under 35 U.S.C. § 103(a) as being obvious over Davies in view of O'Neill in further view of Choi, U.S. Patent Publication No. 2002/0051431. The Applicant respectfully disagrees and traverses the rejection with an argument.

As argued above, O'Neill is not prior art with respect to the priority date of April 17, 2002.

Further, Tables 1, 2 and 3 of Choi does not disclose a communication context as in the present claims. Choi merely discloses the *Dedicated Physical Data Channel* for a given UE. Even if *arguendo* one was to consider the table a communication context as in the claim, the table passed but build at the node based "the Radio Link Setup Request message including the USTS parameters." (See Choi ¶ 0151)

Claims 8, 16 and 24 stand rejected under 35 U.S.C. § 103(a) as being obvious over Davies in view of O'Neill in view of Choi in further view of Suumaki, U.S. Patent No. 6,968,190. The Applicant respectfully disagrees and traverses the rejection with an argument.

As argued above, O'Neill is not prior art with respect to the priority date of April 17, 2002.

Withdrawal of the rejections is respectfully requested.

#### SUMMARY

It is submitted that the claims satisfy the requirements of 35 U.S.C. §§ 101 and 103. It is also submitted that claims 1-26 continue to be allowable. It is further submitted that the claims are not taught, disclosed or suggested by the prior art. The claims are therefore in a condition suitable for allowance. An early Notice of Allowance is

requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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APPENDIX:

The Appendix includes the following item:

- verified English translation of Japanese Appln. No. 2002-114065 filed April 17, 2002